

Small Business Administration

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§ 120.3 Pilot programs.

The Administrator of SBA may from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas. The Administrator shall publish a document in the FEDERAL REGISTER explaining the reasons for these actions.

DEFINITIONS

§ 120.10 Definitions.

The following terms have the same meaning wherever they are used in this part. Defined terms are capitalized wherever they appear.

Associate. (1) An Associate of a Lender or CDC is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraphs (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent.

(2) An Associate of a small business is:

(i) An officer, director, owner of more than 20 percent of the equity, or key employee of the small business;

(ii) Any entity in which one or more individuals referred to in paragraphs (2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company ("SBIC") licensed by SBA).

(3) For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:

(i) For a CDC, the date of certification by SBA;

(ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

(iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

Authorization is SBA's written agreement providing the terms and condi-

tions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

Authorized CDC Liquidator is a CDC in good standing with authority under the Act and SBA regulations to conduct liquidation and certain debt collection litigation in connection with 504 loans, as authorized by §120.975.

Borrower is the obligor of an SBA business loan.

Certified Development Company ("CDC") is an entity authorized by SBA to deliver 504 financing to small businesses.

Close Relative is a spouse; a parent; or a child or sibling, or the spouse of any such person.

Eligible Passive Company is a small entity or trust which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in §120.111.

Intermediary is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to \$25,000.

Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Loan Instruments are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

Loan program requirements are requirements imposed upon Lenders or CDCs by statute, SBA regulations, any agreement the Lender or CDC has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) and 504 loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in §120.802.

Operating Company is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business

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operations personal property owned by an Eligible Passive Company.

Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA's consent.

Rentable Property is the total square footage of all buildings or facilities used for business operations.

Rural Area is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

Service Provider is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

SOPs are SBA Standard Operating Procedures, as issued and revised by SBA from time to time. SOPs are publicly available on SBA's Web site at http://www.sba.gov in the online library.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2117, Jan. 13, 1999; 68 FR 57980, Oct. 7, 2003; 72 FR 18360, Apr. 12, 2007]

EFFECTIVE DATE NOTE: At 73 FR 75510, Dec. 11, 2008, §120.10 was amended by adding new definitions "Acceptable Risk Rating", "Federal Financial Institution Regulator", "Lender Oversight Committee", "Less Than Acceptable Risk Rating", "Management Official", "Non-Federally Regulated Lender", "Other Regulated SBLC", "Person", "Risk Rating", "SBA Lender", "SBA Supervised Lender", and "Small Business Lending Company" in alphabetical order, and removing the definition for "Lender" and adding in its place a definition of "Lender or 7(a) Lender", effective Jan. 12, 2009. For the convenience of the user, the added text is set forth as follows:

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Acceptable Risk Rating is an SBA-assigned Risk Rating, currently defined by SBA as "1", "2" or "3" on a scale of 1 to 5, which represents an acceptable level of risk as determined by SBA, and which may be revised

by SBA from time to time as published in the FEDERAL REGISTER through notice and comment.

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Federal Financial Institution Regulator is the federal banking regulator of a 7(a) Lender and may include the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration.

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Lender or 7(a) Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Lender Oversight Committee is a committee within SBA, with responsibilities as outlined in Delegations of Authority, as published in the FEDERAL REGISTER.

Less Than Acceptable Risk Rating is an SBA-assigned Risk Rating, currently defined by SBA as "4" or "5" on a scale of 1 to 5, which represents a higher level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the FEDERAL REGISTER through notice and comment.

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Management Official is an officer, director, general partner, manager, employee participating in management, agent or other participant in the management of the affairs of the SBA Supervised Lender's activities under the 7(a) program.

Non-Federally Regulated Lender (NFRL) is a business concern that is authorized by the SBA to make loans under section 7(a) and is subject to regulation by a state but whose lending activities are not regulated by a Federal Financial Institution Regulator.

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Other Regulated SBLC is a Small Business Lending Company whose SBA operations receive regular safety and soundness examinations by a state banking regulator or a Federal Financial Institution Regulator, and which meets the requirements set forth in §120.1511.

Person is any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

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Risk Rating is an SBA internal composite rating assigned to individual SBA Lenders, Intermediaries, or NTAPs that reflects the risk associated with the SBA Lender's or

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Intermediary's portfolio of SBA loans or with the NTAP. Risk Ratings currently range from one to five, with one representing the least risk and five representing the most risk, and may be revised by SBA from time to time as published in the FEDERAL REGISTER through notice and comment.

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SBA Lender is a 7(a) Lender or a CDC. This term includes SBA Supervised Lenders.

SBA Supervised Lender is a 7(a) Lender that is either a Small Business Lending Company or a NFRL.

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Small Business Lending Company (SBLC) is a nondepository lending institution that is SBA licensed and is authorized by SBA to only make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBA has imposed a moratorium on licensing new SBLCs since January 1982.

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Subpart A—Policies Applying to All Business Loans

ELIGIBILITY REQUIREMENTS

§ 120.100 What are the basic eligibility requirements for all applicants for SBA business loans?

To be eligible for an SBA business loan, a small business applicant must:

- (a) Be an operating business (except for loans to Eligible Passive Companies);
- (b) Be organized for profit;
- (c) Be located in the United States;
- (d) Be small under the size requirements of part 121 of this chapter (including affiliates). See subpart H of this part for the size standards of part 121 of this chapter which apply only to 504 loans; and
- (e) Be able to demonstrate a need for the desired credit.

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-Federal sources. SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavail-

able to the applicant on reasonable terms and conditions from non-Federal sources without SBA assistance, taking into consideration the prevailing rates and terms in the community in or near where the applicant conducts business, for similar purposes and periods of time. Submission of an application to SBA by a Lender or CDC constitutes certification by the Lender or CDC that it has examined the availability of credit to the applicant, has based its certification upon that examination, and has substantiation in its file to support the certification.

§ 120.102 Funds not available from alternative sources, including personal resources of principals.

(a) An applicant for a business loan must show that the desired funds are not available from the personal resources of any owner of 20 percent or more of the equity of the applicant. SBA will require the use of personal resources from any such owner as an injection to reduce the SBA funded portion of the total financing package (*i.e.*, any SBA loans and any other financing, including loans from any other source) when that owner's liquid assets exceed the amounts specified in paragraphs (a) (1) through (3) of this section. When the total financing package:

- (1) Is \$250,000 or less, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of two times the total financing package or \$100,000, whichever is greater;
 - (2) Is between \$250,001 and \$500,000, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of one and one-half times the total financing package or \$500,000, whichever is greater;
 - (3) Exceeds \$500,000, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of one times the total financing package or \$750,000, whichever is greater.
- (b) Any liquid assets in excess of the applicable amount set forth in paragraph (a) of this section must be used to reduce the SBA portion of the total financing package. These funds must